

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

BRENNAN M. GILMORE,

Plaintiff,

v.

ALEXANDER E. JONES, et al.,

Defendants.

Case No. 3:18- cv-00017 (GEC)

**FREE SPEECH DEFENDANTS' MOTION TO DISMISS PURSUANT TO TEXAS
CITIZENS PARTICIPATION ACT, VA. CODE § 8.01-223.2, RULES 12(B)(2) AND (B)(6)
AND MOTION FOR COSTS, ATTORNEY FEES, AND SANCTIONS**

Pursuant to the Texas Citizens Participation Act, Va. Code § 8.01-223.2, Rule 12(b)(2), and Rule 12(b)(6), Defendants Alex Jones, Lee Ann McAdoo, InfoWars, LLC, and Free Speech Systems, LLC (collectively, the “Free Speech Defendants”) respectfully move the Court for dismissal of this action and for an award of costs, attorney fees, and sanctions.

As shown in the accompanying memorandum, Plaintiff Brennan Gilmore’s defamation and emotional distress claims against the Free Speech Defendants are barred by the First Amendment and fail to state a claim upon which relief can be granted, whether considered under Texas or Virginia law. As for the defamation claims, first, they fail as a matter of law because they do not identify any statements that bear a defamatory connotation. Second, the complaint fails to plausibly allege that any of the challenged statements are materially false. Third, the First Amendment bars liability for the non-verifiable statements of opinion that Gilmore challenges. And, fourth, the complaint fails to plausibly allege actual malice as the First Amendment requires.

Likewise, Gilmore’s claim for intentional infliction of emotional distress fails as a matter of law because it alleges no outrageous conduct, comes nowhere near alleging the kind of serious injury that is required, and is unsupported by any plausible allegation of actual malice as the First Amendment requires.

These defects require dismissal of Gilmore's claims against the Free Speech Defendants pursuant to the Texas Citizens Participation Act, Tex. Civ. Prac. & Rem. Code § 27.001 *et seq.*, or (in the alternative) Virginia's anti-SLAPP statute, Va. Code § 8.01-223.2. They also support dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6).

Finally, all of Gilmore's claims must be dismissed under Rule 12(b)(2) because his complaint identifies no applicable contacts that the Free Speech Defendants have with Virginia and so has provided no basis for the Court's exercise of personal jurisdiction over them.

Dismissal pursuant to Texas Citizens Participation Act entitles the Free Speech Defendants to an award of costs and attorney fees, as well as "sanctions...sufficient to deter the party who brought the legal action from bringing similar actions." Tex. Civ. Prac. & Rem. Code § 27.009. Likewise, Va. Code § 8.01-223.2 requires or at least encourages an award of costs and attorney fees so as to further the purposes of the statute: protecting SLAPP targets from suffering the consequences of abusive litigation and deterring abusive litigation.

For these reasons, the Free Speech Defendants respectfully request that the Court dismiss Counts 1, 7, 8, and 10 of the Complaint, as pertains to them, and find that the Free Speech Defendants are entitled to an award of costs, attorney fees, and sanctions. A memorandum of points and authorities and proposed order accompany this motion.

April 10, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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